FINAL REPORT
(Part I)

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Title: The Law of Languages in Canada

Div: II contract no 9

THE LAW OF LANGUAGES IN CANADA

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Research report prepared for The Royal Commission on Bilingualism and Biculturalism, submitted on January 18, 1966.

GENERAL INTRODUCTION

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Scope of this research project.-

The purpose of this research project was to determine the manner in which the various Canadian jurisdictions: federal, provincial, territorial and municipal - regulate the use of languages. Its result has been to establish what linguistic rights are recognized in Canada.

Our intention not only was to examine all relevant constitutional and statutory provisions, as well as all pertinent administrative regulations and even municipal by-laws, but also how such legislation worked in the reality and what practices, if any, had filled gaps in the law or supplemented written regulations.

Within this frame of reference, we studied - and are now reporting on - the following subjects:

1. how the legislative process functions both at the parliamentary and subordinate levels;
2. the language of court proceedings and of juries;
3. the use of languages before federal and Quebec quasi-judicial tribunals;
4. what recognition municipalities in Quebec and in New Brunswick give to the bi-ethnic composition of their societies;

GENERAL INTRODUCTION

5. the language of official communications, forms and returns, and of some other official and semi-official activities;

6. the language of federal-provincial agreements and of international agreements entered into by Canada.

On the strength of our findings we have ventured to express conclusions on the official status of French and English in every one of the aforementioned jurisdictions.

On the other hand, for a number of practical reasons or because they were covered by parallel research projects, we have not gone into the actual operations of Parliament, of the Supreme Court, of the civil service or of the various educational systems.

Furthermore, while our approach was as objective and dispassionate as humanly possible, and while we avoided commitments to any political or philosophical concepts, we considered our duty not only to point out shortcomings or contradictions in the law, but to outline desirable technical reforms and to suggest p o s s i b l e formulae for constitutional changes.

Organization of this Report.-

The materials in this Report are organized as follows:

I - The legal history of bilingualism in Canada;

II - Jurisdiction over languages in Canada;

III - Legislating in two languages (including subordinate legislation);

IV - The conduct of justice in two languages (bilingual justice, mixed juries, quasi-judicial boards and commissions);

V - The law of bilingual administration (municipal affairs, communications with the authorities, notices, forms and corporations);

VI - The language of international and federal-provincial agreements;

VII - The official status of languages in Canada.

Each Part contains one or more chapters. Each chapter is divided in sections which are numbered according to a decimal system: the first digit or digits are those of the chapter followed by the consecutive number of the section (e.g. 5.06 refers to section 6 of Chapter V). Some particularly long sections are subdivided into alphabetically numbered paragraphs. All references and cross-references are to section numbers rather than to pages. Abundant cross-referencing has been provided. Materials and statistical tables which are not incorporated in the body of this Report, are annexed immediately after the chapter to which they relate and are numbered consecutively (each number consisting of the chapter in Roman numerals and a consecutive letter of the alphabet). Tables in the text are numbered in the same manner. Footnotes and abbreviations are standard. A bibliography is provided at the end of the Report.

The most important findings and recommendations are summarized, with reference to specific sections, at the beginning of our Report.

Methods.-

The precise methods of research used have been described at the beginning of each chapter whenever such discussion seemed advisable. Further remarks will also be found in the bibliography. In brief, the basic research was conducted by four research assistants, with the help, and under the supervision, of the undersigned. In addition to the usual material covered by legal research (statutes, regulations, ordinances, jurisprudence, legal periodicals, treaties and other doctrinal writings), the investigation made extensive use of personal interviews with a large number of officials and tabulated statistically and analyzed the replies to hundreds of questionnaires. These questionnaires were drafted with the assistance of experts and the samplings used were representative and generally satisfactory. Nevertheless, due to a lack of experience, we encountered some practical difficulties. These problems have been pointed out where they occurred. We also made extensive use of statistical data provided by the 1961 census of Canada. No systematic search was made of newspaper sources, but press despatches have been quoted when available and relevant. Finally, we had some limited, but fruitful, inquiries made in the Dominion and Provincial Archives.

But in all objectivity, we must confess that some parts of this Report are far from satisfactory. While we cannot apologize for personal shortcomings, we must underline the somewhat adverse conditions under which this research project was conducted. The project was not conceived until April, 1965. The entire research itself was completed in less than four months, although the Report incorporates some materials obtained earlier by a research assistant and some studies made in the fall of 1965. These findings had to be organized and the Report was drafted in a period of less than three months.

Furthermore, we were hampered by the lack of published material in this relatively unexplored field and by the absence of general studies in Canada on almost all the subjects covered. Such statutory provisions, regulations, jurisprudence and legal writings as we were able to find, were generally indexed improperly or not at all in the legal indexes and had to be found by actual physical search of literally thousands of volumes. Lack of time and of adequate facilities also hamstrung us in following up new avenues of research. Nor were we able to make use of the findings of the many germane projects being carried out under the sponsorship of the Royal Commission. In other words, we consider this Report, voluminous though it is, to be no more than a preliminary survey of an extremely complex and important field of law.

Acknowledgements.-

It would be impossible to acknowledge individually the kind and co-operative assistance received from the hundreds of federal and provincial deputies, officials, judges and magistrates, who gave interviews, filled in questionnaires and replied to our insistent letters. Many of them requested or were promised anonymity and to name only some of them would be an unfair discrimination against the others.

A special adknowledgement should be addressed to our four research assistants: Messrs. Claude de la Madeleine, Armand de Mestral, Bill Fraiberg and Steve Kleiner - who waded through innumerable dusty tomes of statutes, regulations and legal writings, and processed mountains of questionnaires. To an inestimable extent, the success of this Report is owed to their imaginative and steadfast research.

We would also like to express our gratitude to the officials of the libraries of the Bar of Montreal and of the Law Faculty of McGill University who made it possible for us to conduct this research in the most efficient manner possible and favoured us with a very generous interpretation of their internal regulations.

Finally, but not least, this Report would not have been completed had it not been for the devotion, way beyond the call of normal secretarial duty, of several secretaries in our lawfirm, and more particularly of the undersigned's two secretaries - Mrs. Lise M. Donald and Miss Claudine Proutat.

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SUMMARY AND PRINCIPAL FINDINGS

PART I - THE LEGAL HISTORY OF BILINGUALISM IN CANADA

1. During the British Military Regime (1760-1763) French continued to be used in the administration of justice and in local administration (1.27).

2. During the Civil Government which follows (1763-74) there was a prolonged and virulent debate between British assimilationists and their opponents as to the preservation of French law and institutions in Canada. But by the end of the period the British Government abandoned its earlier assimilationist policy (1.73).

3. This change of heart led to the Quebec Act (1774) which re-introduced French private law, preserving English criminal law, and removed religious handicap to French-Canadian participation in public affairs (1.71). The Act did not deal specifically with language rights (1.71 and 1.72).

4. The Legislative Council set up under the Act was bilingual (1.75) and its ordinances were published in both languages (1.78). The system of justice gave recognition to language rights (1.77, 1.79 to 1.82, 1.84).

5. Loyalist immigration and demands for recognition of English rights led to the Constitutional Act of 1791 dividing the country into Upper and Lower Canada. French-Canadians were given full right to sit in the Legislative Councils of either Province (1.90). After an acrimonious debate, the Legislature of Lower Canada provided for the translation into both languages of all bills before the first reading (1.92). Provisions were

made for the printing of all statutes in both languages (1.95).

6. In Upper Canada English became the only lawful language of proceedings in the courts (1.98). Provisions were made by the Legislative Assembly of Upper Canada for the translation into French of various statutes, but we were unable to find any such translations (1.98).

7. After disturbances in Canada during 1838, Lord Durham in his famous Report attributed the difficulties partly to the racial cleavage between the two national groups and recommended reunion of the two Canadas and anglicization of the French elements (1.100).

8. The result of these recommendations was the 1840 Act of Union, section XLI whereof made the new united parliament unilingually English, (1.101). Parliament soon took steps to upset the rigour of the Act of Union by providing for French translations of statutes and other official documents (1.102 and 1.104). In 1848 the Imperial Parliament repealed section XLI allowing the said Parliament itself to regulate the use of language (1.105). Parliament soon did so and gave equal official status to both languages (1.106 to 1.108). But in the Province of Upper Canada statutes continued to be unilingual (1.109). During this period courts in Lower Canada were fully bilingual (1.111). Detailed provisions were also made during this period for mixed juries (1.112 and 1.113).

9. In the West, a measure of bilingualism was found in the District of Assiniboia, the forerunner of Manitoba: in its Council (1.126 and 1.128 to 1.130) and in the administration of justice (1.131 and 1.132).

10. Section 23 of the Manitoba Act (whereby the Province was created in 1870) provided for the use of English and French in the Legislature and in court proceedings (1.138). In the next 20 years Manitoba legislation embodied a considerable number of provisions extending bilingualism (1.139 and 1.140). However, as a result of increased English population and assimilationist pressures, in 1890 the Manitoba Legislature passed a statute making English the sole official language in the Legislature and in the courts (1.143). The validity of this abolition of French is subject to some reservations(1.144 and 2.06).

11. In the Northwest Territories, following the creation of Manitoba, a Council was created which comprised a number of French-speaking representatives (1.148). Some recognition of French is found in proceedings of the Council and in the Petty Courts (1.149). In 1877 the Northwest Territories Actwas amended to allow the use of English or French in the Council and in the courts of the Territories (1.151). Until 1892 the ordinances of the Council were published in both languages (1.152). Although provisions gave effect to French rights (1.153), in 1890, after anti-French political agitation, the Northwest Territories Act was amended to permit the Legislative Assembly to regulate its use of languages by regulation embodied in a proclamation (1.155). In 1892 a resolution was passed making English the only official language but, notwithstanding the prevailing contrary opinion, we have been able to establish that the resolution was never proclaimed so that French was never

properly abolished in the Legislative Assembly of the Northwest Territories (1.156).

12. Since the relevant laws of the Northwest Territories were made applicable to the Yukon upon its creation in 1898, we are led to believe that French is still an official language in the Council of the Yukon Territory and its courts (1.159).

13. Alberta and Saskatchewan were carved out of the Northwest Territories in 1905. The laws of the Northwest Territories were made applicable to the new provinces except insofar as they were expressly repealed (1.162). Since the language provisions in the Northwest Territories Act were never properly abrogated nor ever expressly repealed in the new provinces, we consider that there is doubt as to whether English can be said to be the only official language of the Legislatures and courts of Alberta and Saskatchewan (1.164 and 1.165).

14. A review of all the major documents and statutes of continuing constitutional significance for Canada discloses that the bulk and the most important of them have been drafted only in English (1.169).

PART II - JURISDICTION OVER LANGUAGES IN CANADA

1. Section 133 of the B.N.A. Act provides for the use of both languages in Parliament and in the Quebec Legislature as in the courts of Canada and of Quebec. A careful analysis establishes that the scope of this section is extremely limited: it does not encompass subordinate legislation, some court proceedings, any quasi-judicial boards and commissions, or any administrative activities(2.02).

2. There is no doubt that Parliament and the Provinces in legislating on subject matters entrusted to their jurisdiction can regulate the use of languages as an ancillary (2.03). But the constitution does not define jurisdiction over language as a substantive matter of culture (2.04 and 2.05). Substantive jurisdiction would appear to belong to the provinces (2.05).

3. A textual analysis of the B.N.A. Act and the Manitoba precedent gives some plausibility to the argument that Quebec could abrogate unilaterally s. 133 of the B.N.A. Act insofar as it applies to that province (2.06)

4. There is need for clear constitutional definition of jurisdiction over languages and provisions for all areas of public affairs (2.07).

PART III - LEGISLATING IN TWO LANGUAGES

1. The practice of legislating in two languages has deep historical roots in Canada (3.03).

2. The drafting and publication of federal statutes:

A - The B.N.A. Act requires publication in both languages (3.04).

B - Drafting is done by the Department of Justice (3.04).

C - The universal practice is to draft federal statutes in English and to effect translation into French only after the final draft has been prepared in English (3.06).

D - The translation into French is made by the federal Translation Bureau. The operations of this Bureau is hampered by the pressures on it and the lack of specialists in the fields covered by individual statutes as well as by the difficulty of recruiting competent translators (3.08).

E - As a result the French versions of federal statutes are frequently inadequate and non-idiomatic (3.09).

F - In correspondence between Prime Ministers Lesage of Quebec and Lester Pearson it was suggested that one way of remedying this situation would be to arrange for simultaneous drafting in both languages and publication side by side on the same page of both versions (3.10). Some highly placed federal officials consider this proposal impractical (3.11).

G - At the present time the French and English versions of federal statutes are printed in separate volumes. It is recommended that both versions be printed on the same page side by side as is the case with Quebec statutes (3.13).

3. The drafting and publication of Quebec statutes:

A - Quebec statutes are drafted by the Department concerned, normally in French, and then translated (3.14).

B - The translation in Quebec is decentralized and is normally performed inside the department concerned (3.15). The same practical difficulties as are found by the federal Translation Bureau are met with in Quebec (3.15).

C - Quebec statutes are debated in both languages (13.20 (b)) and are published in both languages with each version on the same page (3.16).

4. The drafting and publication of federal subordinate legislation:

A - Subordinate legislation has acquired a very great importance (3.17).

B - Federal subordinate legislation can be divided between the more important regulations which are required by the Regulations Act to be published in both languages and regulations which are either exempt from publication or are not covered by the Act (3.20).

C - In contradistinction with federal statutes, there is no centralized drafting of subordinate legislation which is prepared inside the department concerned (3.21).

D - The Department of Justice is attempting to increase its control over the drafting of subordinate legislation but our investigations disclosed that the participation of the Department of Justice is generally limited to revision only and that it is practically never involved

in the actual drafting (3.22).

E - Such regulations as need Cabinet approval, must be presented in bilingual versions to the Privy Council which checks them and will on occasion correct the translations (3.23).

F - The overwhelming practice of federal departments, intermediate agencies and boards or commissions is to draft subordinate legislation in English first and then translate them. Whenever regulations are exempted from publication in the Canada Gazette a French version will not be issued unless absolutely necessary in the opinion of the agency involved,(3.24).

G - It would seem that virtually all the original copies of orders-in-council of the federal Cabinet are in English only (3.24 (d)). The reasons for the drafting practices of federal entities vary from the language of the drafting officers to a number of other practical factors, but the key one was the language of the legal officer drafting subordinate legislation (3.24 (f)). It would seem that relatively few of the legal officers involving in drafting subordinate legislation are bilingual (from 17% to 26%).

H - Translation of subordinate legislation only takes place after the final English draft has been approved (3.25). The translation is frequently incompetent (3.26).

I - Most departments, boards and commissions oppose simultaneous drafting on such grounds as extra costs, the need and difficulty of finding competent personnel, problems of communication between draftsmen and senior officers, unnecessary delays and resulting problems of interpretation(3.27).

J - Most departments, however, do not object to bilingual versions of government regulations (3.28).

K - Regulations printed in the Canada Gazette are published in both languages. When regulations are exempted from such publication or not covered by the Regulations Act, the most important of them will be published in both languages but the bulk appears to be published in English only, particularly internal and staff regulations (3.30).

L - When subordinate legislation is published in both languages, publication is either simultaneous or it is claimed that there is a delay of at most a few weeks between publication of the two versions (3.31).

5. The drafting and publication of subordinate legislation in Quebec:

A - Quebec subordinate legislation and orders-in-council are normally drafted in French (3.35). In fact, orders-in-council are normally only approved in French and unofficial English versions are made available (3.35).

B - Translation is normally effected by internal translators and in some cases by employees of the Quebec Official Gazette (3.36.).

C - There was less opposition in Quebec to simultaneous drafting in both languages (3.37) and none to bilingual publication (3.38).

D - Quebec does not have the equivalent of the federal Regulations Act. Leading regulations are published in the Quebec Official Gazette in both languages simultaneously (3.39). Even when publication does not take place in the Quebec Official Gazette, the tendency is for it to be bilingual (3.40).

6. Problems of interpretation arise from the existence of bilingual versions of legislative texts and, in addition to statutory rules (3.42), the courts have evolved a fairly complex series of jurisprudential rules of interpretation (3.44 to 3.47).

PART IV - THE CONDUCT OF JUSTICE IN TWO LANGUAGES

A. BILINGUAL COURTS AND JURIES

1. Federal courts which are required to be bilingual by s. 133 of the B.N.A. Act include: the Supreme Court, the Exchequer Court (which also exercises the jurisdiction of the Court of Admiralty and the Prize Court), courts martial and military courts and presumably the Senate Divorce Commissioner. The status of provincial courts which are designated as federal courts (e.g. bankruptcy courts and citizenship courts) is not entirely clear. Since the courts of the Northwest Territories and of the Yukon are created by acts of Parliament, they also fall under s. 133. (4.17).

2. Section 133 of the B.N.A. Act is applicable to all Quebec courts. They include the Superior Court, the Provincial Court (formerly Magistrate's Court), the Court of Appeal, the Court of Sessions of the Peace, the Municipal Courts of Montreal and Quebec, the Court of Queen's Bench, Crown Side (which is the Superior Court of criminal jurisdiction in Quebec) and probably all other provincial tribunals and more particularly all municipal courts in the Province. The status of the Highway Safety Board and of the Quebec Mining Judge is not clear (4.18).

3. There remains some doubt as to whether the courts of Alberta and Saskatchewan are still technically bilingual (4.19).

4. Section 133 does not apply to courts created by any province other than Quebec (4.20).

5. Short of the unlikely ideal of all participants in court proceedings being thoroughly conversant with both languages, bilingual justice requires the

availability of competent interpreters. The right to interpreters is recognized explicitly or inferentially by several federal statutes including the Canadian Bill of Rights, as in the legislation of practically all Provinces and Territories (4.23). Nevertheless the courts have held that the right to an interpreter is not an absolute right and that the judge has discretion to decide according to the circumstances (4.24.). The courts have also held repeatedly that the right to an interpreter can be waived implicitly or explicitly (4.25). We deem this jurisprudential attitude reprehensible and contrary to sound concepts of justice.

6. The role of an interpreter is an essential and difficult one. The rights of a party can be jeopardized by an incompetent interpreter or one who purports to give legal advice (4.26). Nevertheless, at the present time, there is not a single jurisdiction in Canada which provides or requires that interpreters be specially trained or demonstrate their qualifications. The competence of interpreters is decided perfunctorily by the trial judge in each case, although it is hard to imagine any person less able to determine the knowledge which a proposed interpreter has of a foreign language (4.27).

7. The inadequacies and improvisations of the system of interpreters were found to be characteristic of courts throughout the country (4.28).

8. In the course of our investigation we discovered that notwithstanding the fact that the only official language of these provinces was English, cases at the lower jurisdictional levels would be pleaded in French when all the parties and the magistrate understood the language in some areas of Alberta (4.28(a)), Manitoba (4.28 (c)), New Brunswick (4.28 (d)),

and Ontario (4.28 (h)). Nevertheless, in all these cases there was no right of appeal and the records would be kept in English.

9. The need for careful training of interpreters is underscored by the problems posed by their use in trials by mixed juries in particular (4.29) and by the reluctance of some courts to attribute the same weight to translated evidence as to testimony in the court's own language (4.30).

10. Bilingual justice also requires the presence of court stenographers able to take down the evidence in both languages. Because of the dearth of such stenographers even in such thoroughly bilingual jurisdiction as Montreal, we recommend the increasing use of mechanical means of recording court proceedings (4.34 and 4.37).

11. Since an improved system of interpretation may increase court costs beyond the means of some parties, and thereby deprive them of their right to justice in their own language, we recommend that in jurisdictions which are officially bilingual and where interpretation is needed to provide justice in two languages, interpreters be paid by the state unless the judge orders otherwise for valid reasons (4.38).

12. Bilingual justice requires the possibility of appeal to an equally bilingual appellate court. Any widening of the geographical ambit of s. 133 of the B.N.A. Act must be preceded by a solution of this problem (4.39).

13. If the right to bilingual justice is to be extended beyond the Province of Quebec and federal courts, it is suggested that bilingual judicial districts be created in areas where the proportion of the linguistic minority reaches either 20% or 30% or some intermediate figure (4.40). On the basis of the 1961 census figure, a study is made of which counties or census divisions in Canada would become bilingual under either formula. The only provinces affected would be Manitoba, New Brunswick, Nova Scotia and Ontario, with a substantial number of bilingual districts in New Brunswick and Ontario even under the 30% formula. Conversely, if a similar formula were to be applied to Quebec, only 5 out of a total of 75 census divisions or counties would remain bilingual under the 30% formula, and 12 under the 20% formula. Furthermore, if such formulae were to be adopted, we recommend that provisions be made to avoid gerrymandering perhaps by entrusting the definition of judicial boundaries to a neutral constitutional court or

14. The right to a mixed jury or a jury of one's own language is guaranteed by the Criminal Code only in Quebec and, in a limited form, in Manitoba (5.11 and 5.13). In Quebec the right to a criminal mixed jury has been clarified by the Jury Act and the jurisprudence (5.12). The use of mixed juries is attended with a number of practical problems, one of which is the difficulty of finding sufficient qualified jurymen of the minority language in some areas.(5.16).

15. Quebec is the only jurisdiction which provides for mixed civil juries or civil juries in the language of the parties (5.17).

16. Because of ambiguities in the law and the practical problems found in applying the law, we recommend the adoption of clear federal and provincial legislation and perhaps the appropriate amendments in the B.N.A. Act (5.22).

B. ADMINISTRATIVE JUSTICE

(i) FEDERAL QUASI-JUDICIAL BOARDS AND COMMISSIONS

1. Despite its growing importance, quasi-judicial administrative functions are free from any constitutional regulations since they were not foreseen at the time of Confederation. The requirements of s. 133 of the B.N.A. Act do not apply to federal quasi-judicial boards or commissions (6.02).

2. Our detailed study of 15 federal boards and commissions disclosed that:

A - The mother tongue of 79% of all their members is English (6.07 (a)).

B - An extremely small number of these English-speaking members could either read, write or speak French well or fairly well, making it nearly impossible for them to conduct hearings in French (6.07 (b)).

C - On the other hand, all French-speaking members were found to be fluently or nearly fluently bilingual - as against less than 10% of the English-speaking members (6.07 (c)).

D - Only 7.2% of all cases are conducted in French, practically all of them emanating from Quebec (6.08(b)).

E - 89.1% of all decisions are rendered in English and the remainder in French (6.08 (f)).

F - There does not seem to be an increase in the proportion of French cases in the last 3 years (6.08 (g)).

G - The facilities for interpreters or bilingual stenographers did not seem to be too satisfactory (6.08 (h) and (i)).

3. Even the very limited bilingualism of federal quasi-judicial boards or commissions is not the result of any legal requirement, but based on practice or custom (6.09).

(ii) QUASI-JUDICIAL BOARDS AND COMMISSIONS IN QUEBEC

1. Unlike the courts of the Province, quasi-judicial boards and commissions in Quebec are not governed by s. 133 of the B.N.A. Act (7.02).

2. Our detailed survey of 11 Quebec boards and commissions disclosed:

A - 94.1% of their members are French-speaking (7.03 (a)).

B - Practically all these French-speaking members are fluently bilingual (7.03 (b)).

C - An average of 86.5% of all written proceedings are in French and the remainder in English, the percentages being almost the same for oral presentations (83.8% and 16.1%), (7.04).

D - French is the language used most frequently, but English is said to be used "often" (7.04).

E - The facilities for interpreters and bilingual stenographers are not too satisfactory (7.04).

F - 86.5% of all decisions are rendered in French (7.05), although English translations may be made available.

3. Quebec administrative tribunals are thus considerably better equipped to hear cases in both languages than their federal counterparts and, in fact, hear 16.1% of their cases in English, which is more than double the proportion (7.3%) of cases conducted in French before federal boards (7.08).

PART V - THE LAW OF BILINGUAL ADMINISTRATION

CHAPTER VIII - BILINGUAL MUNICIPAL INSTITUTIONS

1. Municipal institutions fall within provincial jurisdiction under the B.N.A. Act (8.03). In Quebec, save for special exemptions, all public notices and municipal by-laws must be in both languages (8.03).

2. Sixteen out of 17 Quebec municipalities surveyed always drafted their by-laws in French and 9 published them only in French, which is illegal (8.04). The 5 New Brunswick municipalities surveyed all published their by-laws in English only.

3. Sixteen out of 17 Quebec municipalities stated that the language usually spoken during council meetings was French as were the minutes of all 16 (8.05).

4. All Quebec municipalities complied with the legal requirement that their public notices be bilingual (8.07). Posters, traffic and road signs were also generally bilingual (8.08 and 8.09). The situation was the same for safety signs and required labels (8.10). Some New Brunswick municipalities published notices in both languages.

5. Sixteen out of 17 Quebec municipalities issued bilingual traffic tickets and other summonses. Approximately 90% of all correspondence or communications issued or received by Quebec municipalities is in French (8.19). In New Brunswick English is the only language indicated except by the City of Edmundston which states that 40% of the correspondence was in French.(8.19).

6. If formal recognition is to be given to the right to conduct municipal affairs in both languages where circumstances warrant it, it is recommended that the same population formula as in the case of bilingual judicial districts be used (8.24). But it must be pointed out that at the present time there does not appear to exist any legal impediment to any municipality anywhere in Canada conducting its affairs in two languages.

CHAPTER IX - LINGUISTIC REGULATIONS OF PUBLIC ADMINISTRATION AND PRIVATE ACTIVITIES

1. There are no constitutional provisions governing the language of public administration (9.01).

2. Public notices:

A - Federal law generally does not require obligatory public notices to be published in both languages except in Quebec (9.04).

B - In Quebec the general practice is to require publication of all public notices and even many special notices to be bilingual (9.05).

C - In all other provinces the required language is English except for a statute of New Brunswick dealing with the town of Grand Falls which requires bilingual notices (9.06).

3. The linguistic requirements in connection with signs, labels and notice boards stipulated by law are approximately the same as in the case of public notices (9.07).

4. Official forms and returns:

Except within the federal jurisdiction and in Quebec, forms and notices are required to be in English, but in Manitoba some employment records are required to be kept in either English or French according to the language of the employee (9.08). Ballots and other forms are normally bilingual only in Quebec (9.09).

5. When there are linguistic requirements to the right to exercise any official, professional or private function the following situation was found:

A - In federal law, English and French are treated almost equally, with a slight legal bias towards English.

B - In Quebec both languages are generally treated equally.

C - In all other provinces and territories, almost without exception, English is the only qualifying language.

(9.10 and 9.11).

6. When the language of private documents is regulated (trademarks, negotiable instruments, bills of ladings and other documents issued by public carriers) federal law places both languages on equal levels, at least in Quebec, and Quebec normally requires the use of both languages (9.12).

CHAPTER X - INCORPORATIONS, LETTERS PATENT, PERMITS AND LICENCES

1. Federal law provides for the incorporation of companies under French, English or bilingual names and permits corporate activities to be carried out in either language (10.02).

2. The situation is the same in Quebec (10.03 (g)).

3. In other provinces, particularly in New Brunswick, there seems to be a willingness to grant French or bilingual corporate names, but otherwise companies seem to be required to operate in English (10.03).

PART VI - LANGUAGE OF INTERNATIONAL AND FEDERAL-PROVINCIAL AGREEMENTS

A - FEDERAL-PROVINCIAL AGREEMENTS

1. All agreements with common law provinces are negotiated, drawn up and signed in the English language only (11.05).

2. With respect to Quebec, the practice varies considerably, not only from department to department, but within departments themselves. Some agreements exist in French and English official versions; others exist in both languages but have only one authentic version; some are unilingual (11.05).

3. The Department of Justice does not play any systematic role in the drafting of these agreements (11.06).

4. The only province with which agreements are signed in French is Quebec (11.24 (b)).

5. But not all agreements signed with Quebec are by any means in French or even bilingual (11.24 (c)).

6. Irrespective of the languages of the ultimate text, the practice of the federal agencies involved is to prepare the original draft in English only (11.24 (e)). When bilingual texts are signed, they seem to be of equal validity (11.24 (f)).

7. It would appear that some federal-provincial agreements are signed by some provinces in one language and by Quebec in another language or both languages which is an undesirable situation, leading to possible conflicts. From the point of view of juridical consistency it would be better if all provinces signed in the same language or signed both versions when there is a bilingual text (11.25).

B - INTERNATIONAL AGREEMENTS AND DIPLOMATIC EXCHANGES

1. The final draft of Canadian international agreements is prepared by the Legal Division of the Department of External Affairs which also occasionally plays a role in negotiations (12.04 and 12.05).

2. The Department of External Affairs follows the following rule: when Canada signs a treaty, at least one official text must be in either English or French (12.09).

3. During the 1928-65 period surveyed, Canada entered into 239 bilateral agreements. Of these, only 25 (or 10.4%) had at least one version in French. Moreover, 24 of these 25 bilateral agreements were signed with either France, Switzerland or Belgium which can be considered French-speaking countries, at least for diplomatic purposes. (12.22). In other words, in practically every single instance that Canada has signed a bilateral agreement with another country and the language of that country as well as one of Canada's official languages have been used, the language used by Canada has been English.

4. During the same period, Canada entered into 228 multilateral agreements. Of these, 162 (or 71%) had at least one French version (12.22). Multilateral agreements in English only or French only are rare. The large number of agreements in which both French and English are official is not very significant, since Canada may have little choice in the matter and an increasing number of multilateral agreements are drafted as a matter of course in the five

United Nations languages (12.19 (i)).

5. Considerably more significant are the figures for exchanges of notes in which Canada has an absolute discretion in its choice of language. A total of 461 notes were exchanged during the 1928-65 period. Of these 22 only (or 4.7%) were in French. And of these 22, 18 were with France, Switzerland and Belgium.(12.22) In fact, we found that even in dealing with French-speaking countries, it is not unusual for the Department of External Affairs to send its notes in English (12.21 (i)).

6. Out of a grand total of 928 international agreements entered into by Canada since the beginning of 1928 and up to and including the 21st of August, 1965, only 209 (or 22.5%) are in French or contain a French version. (12.23).

7. Canada practically never uses French except when it deals with French-speaking countries such as France, Switzerland and Belgium. In all other cases, English is used (12.23).

8. On the other hand, it must be pointed out that Quebec itself seems to sign most of its international agreements in English (12.23 (a)).

PART VII - CONCLUSIONS AS TO THE OFFICIAL STATUS OF LANGUAGES IN CANADA

1. An official language is a language in which all or some of the public affairs of a particular jurisdiction are conducted, either by law or custom (13.02).

2. Limiting our opinion to the juridical as distinguished from the practical situation, we believe that federal law treats French and English as almost equal official languages, although in some cases preference is given to English or French is only required in Quebec (13.10).

3. Of all Canadian jurisdictions, including the federal one, Quebec gives the widest official status to both languages and treats them with the greatest equality (13.20 (h)). Despite very narrow exceptions and the occasional and symbolic use of French in their Legislatures, all other provinces by custom, rather than formal statute, treat English as their sole official language. New Brunswick, with a French minority of 35.2% comes closest to giving a measure of recognition to French (13.14(e)).

4. The juridical situation does not reflect ethnic realities, especially in New Brunswick and in the areas of heavy French concentrations in Nova Scotia, Ontario and Manitoba.(13.23).